

REMARKS

This Amendment is responsive to the Office Action of March 20, 2007. A request for extension of time and the appropriate fee are included.

Pending Claims

Prior to entry of this Response, Claims 1-7, 10 and 13, and 15-24 were pending and Claims 8, 9, 11, 12 and 25-27 stood withdrawn pursuant to Applicant's 10/7/05 election of claims in response to a restriction requirement. Subject to entry of the above amendment canceling Claim 3, 4, 16, 17, 18, and 22-27, and ignoring withdrawn Claims 8, 9, 11 and 12 for the moment, Claims 1, 5-7, 10, 13, 15, 19-21 are now pending.

Generally

Applicant gratefully acknowledges the Examiner's withdrawal of the prior rejections based on Chu, Diduch and Skiba. The only remaining issue is the continued rejection of the claims as anticipated by Toy and certain of the claims as obvious over Toy in view of Trott. Applicant has carefully amended the claims and respectfully request reconsideration based those amendments and the following remarks.

Section 112 - Claim 2

Applicant has canceled claim 2 in light of the inclusion of the subject matter in previously amended Claim 1. Applicant respectfully submits that this deletion resolves the rejection under 35 U.S.C. 112, first paragraph.

Claims 1, 5-7, 10 - Toy - 102(b)

The Office Action rejects Claims 1, 5-7, and 10 under 35 U.S.C. 102(b) as anticipated by Toy. In response, Applicant has amended independent Claim 1 to include the limitation of dependent Claims 3 and 4 (now canceled), and has amended independent Claim 1 to clarify that the bifurcated portions have a “proximate and spaced” relationship to one another even when the needle is in the retracted state.

... the bifurcated portions having a proximate and spaced relationship when the needle assembly is in the retracted state and having a separated and further spaced relationship when the needle assembly is in the extended state;

This is distinguished from Toy where it can be seen, e.g. in Figure 4, that the latch 9 will compress against the surface of the member (identified as 7) when the shaft 3 is retracted into the sheath 11. This is made expressly clear in Toy, at Col. 8, lines 23-24, which states that “The latch 9 is operated to clamp onto the body of the suture 20 ...” (emphasis added). The claimed device, by contrast, maintains a proximate and spaced relationship as shown, for example, in Applicant’s Figure 14.

Additionally, Applicant has amended Claim 1 to specify that it has a hook as shown and described in the original application. Applicant acknowledges that Toy refers to a “hook”, but it is most definitely not a hook that, as set forth in amended Claim 1, is formed from a distal portion of the gathering arm that extends backward from the sharp distal tip to form an opening:

a sharp distal tip of the needle assembly being unitary with at least one of the bifurcated portions; backing arm at a distal end of the suture slot and unitary with the distal portion of the gathering arm at the distal end of the suture slot, the distal portion of the gathering arm extending proximally from the sharp distal tip to form a hook around an opening at a distal end of the suture slot to retain the suture, a portion of the opening remaining distally of the elongate shaft when the needle assembly is in the retracted state;

Moreover, the claimed opening within this hook (see e.g. 52 of Applicant's Figure 14) remains distally of the elongate shaft when the needle assembly is retracted. By contrast, as explained at Col. 4, lines 20-23, Toy leaves nothing distally of the sheath 11 when the shaft 3 is retracted in that it not only clamps the suture with latch 9, it also clamps the suture between the shoulder 8 and the end of the sheath 11 (emphasis added):

If a suture is captured within the hook 8, the longitudinal displacement of the sheath relative to the head 8 not only captures the suture within the hook, but also **clamps the suture between the end of the sheath 11 and the underside of the head 6.**

Toy is all about clamping.

Based on the foregoing, Applicant respectfully submits that independent Claim 1 is allowable over Toy and that dependent Claims 5, 6, 7, and 10 add further patentable subject matter.

Claims 13, 15, and 19-21

Applicant has amended Claim 13 to incorporate the allowable subject matter of Claim 18 and the intervening Claims 16 and 17 (now canceled). As such,

Applicant respectfully submits that Claim 13 is in condition for allowance and that dependent Claims 15 and 19-21 are allowable by virtue of their adding of further patentable subject matter.

Withdrawn Claims

In light of the fact that the withdrawn Claims 8, 9, 11 and 12 all depend from allowable claims, Applicant respectfully requests that the withdrawn claims be passed to issue as well. Applicant has made an amendment to withdrawn Claim 11 with this likelihood in mind.

Summary

It now appearing that this case is fully in condition for allowance as to Claims 1, 5-7, 10, 13, 15, 19-21, and also as to previously withdrawn Claims 8, 9, 11 and 12, Applicant earnestly solicits a notice to that effect. Applicant invites the Examiner to call the undersigned attorney if it appears that a phone conference would further this case in any way.

Respectfully submitted,

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